



ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

15 October 13, 2015


PATRICK O'QUINN
ACTING EXECUTIVE OFFICER

Los Angeles County
Board of Supervisors

Hilda L. Solis
First District

Mark Ridley-Thomas
Second District

Sheila Kuehl
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

October 13, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT TO MAMMOGRAPHY EQUIPMENT
PREVENTIVE MAINTENANCE AND REPAIR SERVICES AGREEMENT
WITH HOLOGIC, INC.
(3rd and 5th SUPERVISORIAL DISTRICTS)
(3 VOTES)**

Mitchell H. Katz, M.D.
Director

Hal F. Yee, Jr., M.D., Ph.D.
Chief Medical Officer

313 N. Figueroa Street, Suite 912
Los Angeles, CA 90012

Tel: (213) 240-8101
Fax: (213) 481-0503

www.dhs.lacounty.gov

SUBJECT

*To ensure access to high-quality,
patient-centered, cost-effective
health care to Los Angeles County
residents through direct services at
DHS facilities and through
collaboration with community and
university partners.*

Approval of an Amendment to the existing Mammography Equipment Preventive Maintenance and Repair Services Agreement with Hologic, Inc. for equipment maintenance and repair services at various Department of Health Services' facilities, and a request for delegated authority to execute as-needed future amendments to this Agreement.

IT IS RECOMMENDED THAT THE BOARD:

1. Authorize the Director of Health Services (Director), or his designee, to execute Amendment No. 3 to Agreement H-703614 with Hologic, Inc. (Hologic), effective upon Board approval to increase the maximum obligation for Olive View-UCLA Medical Center (OV-UCLA MC) by the amount of \$242,064, which will increase the total maximum obligation from \$610,000 to \$852,064, for the provision of additional equipment maintenance and repair services, with no change in the current expiration date of October 31, 2018.

2. Delegate authority to the Director, or his designee, to execute future



www.dhs.lacounty.gov

Amendments to add, delete and/or make non-substantive changes to the terms and conditions in the Agreement; add or delete facilities and/or County Departments; and approve necessary changes in the Statement of Work for medical equipment maintenance and repair services.

3. Delegate authority to the Director, or his designee, to amend the Agreement to increase the total annual amount of the Agreement, by no more than 40 percent above the total annual amount requested for Contract Year 2015-2016, for a total possible annual increase of \$77,280 for the purpose of adding equipment coming off warranty, providing for out-of-scope repairs or maintenance to equipment that is excluded under the Agreement's basic maintenance services, adding equipment or services to additional locations, obtaining professional services, and covering emergency or unforeseen as-needed equipment maintenance, repair and support services.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first recommendation will allow the Director, or his designee, to execute an Amendment, substantially similar to Exhibit I, to the current Agreement with Hologic for equipment maintenance and repair services at various County facilities, and increase the maximum obligation for OV-UCLA MC by the amount of \$242,064, which will increase the total maximum obligation from \$610,000 to \$852,064 for the provision of additional equipment maintenance and repair services.

Hologic mammography equipment is used for the diagnosis of breast cancer. Hologic is a leader in the mammography equipment industry, and its equipment has become standard at all DHS facilities. Due to the cost of maintenance, the addition of equipment that is coming off warranty is anticipated to exceed the 25 percent delegated authority that was originally requested in the Agreement.

Approval of the second recommendation will allow the Director the flexibility to amend the Agreement to add, delete and/or make non-substantive changes to the terms and conditions in the Agreement, add or delete facilities and County Departments accessing the Agreement, and approve any necessary changes to the Statement of Work of the Agreement.

Approval of the third recommendation will allow the Director, or his designee, to increase the annual maximum amount of the Agreement by no more than 40 percent above the total annual amount requested for Contract Year 2015-16 to add equipment coming off warranty, obtain professional services, out-of-scope repairs or support services, add additional locations, and perform emergency work, where applicable.

The Joint Commission requires facilities to ensure routine preventive maintenance, timely repairs and performance safety. The requested delegated authority is necessary to enable the Agreement to be amended in a timely manner to guarantee that critical equipment is maintained appropriately to ensure the safety of patients and facility staff, and meet the requirements of The Joint Commission. Board policy generally allows delegated authority to increase the total annual cost up to 10 percent. However, based on experience with several other equipment maintenance and repair service agreements, DHS believes that requesting 40 percent for a potential increase is appropriate since even the addition of a few pieces of equipment or an additional facility may require a significant funding increase.

Facilities will only request that equipment, locations, emergency work and/or support services are added to the Agreement if additional services are needed and if funding is available in the facility's budget. In accordance with Board Policy 5.120, on September 3, 2015, DHS provided the Board

with a copy to CEO, the required two-week notice of intent to request a delegation of authority in excess of 10 percent.

Implementation of Strategic Plan Goals

The recommended actions support Goal 1, Operational Effectiveness/Fiscal Sustainability; and Goal 3, Integrated Services Delivery of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

The total annual cost increase for the Amendment to the Hologic Agreement is \$242,064, an increase from \$610,000 to \$852,064, for the provision of additional equipment maintenance and repair services.

The total potential annual increase under the 40 percent delegated authority for the Agreement is \$77,280 (Contract Year 2015-16 estimated expenditures is \$193,200) and would be funded using existing resources.

Funding is included in the DHS Fiscal Year (FY) 2015-16 Final Budget and will be requested in future years' budgets as necessary.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Board approved an Agreement with Hologic on November 12, 2008 for provision of maintenance and repair services of mammography equipment. A subsequent Amendment extended the term of the Agreement through October 31, 2018.

The Agreement includes all Board of Supervisors' required provisions, including the most recent provision, "Time Off for Voting."

The services provided under the Agreement are highly specialized and cannot be provided by County staff. Further, these services are only needed on a part-time and intermittent basis. Therefore, the Agreement is not subject to the Living Wage Program (Los Angeles County Code Chapter 2.201) and is exempt from Proposition A (Los Angeles County Code Chapter 2.121).

County Counsel has approved Exhibit I as to form.

CONTRACTING PROCESS

Hologic is the Original Equipment Manufacturer (OEM) and uses proprietary technology so competitors cannot service its equipment or it limits the availability of equipment parts to the third-party service providers. Therefore, when the warranty expires, the best option is to contract with the OEM to ensure that the equipment is maintained in accordance with equipment specifications. Another benefit to contracting with the OEM is it provides a guarantee for faster access to OEM parts when general or especially, emergency repair services are required.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommendations will allow DHS to obtain ongoing critical equipment maintenance and repair services for medical facility operations and direct patient care.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is written in a cursive, fluid style.

Mitchell H. Katz, M.D.

Director

MHK:al

Enclosures

c: Chief Executive Office
Interim County Counsel
Executive Office, Board of Supervisors

**MAMMOGRAPHY EQUIPMENT PREVENTIVE MAINTENANCE AND REPAIR SERVICES
AGREEMENT**

AMENDMENT NO. 3

THIS AMENDMENT is made and entered into this ____ day of _____, 2015.

By and between

COUNTY OF LOS ANGELES
(hereafter "County")

And

HOLOGIC, INC.
(hereafter "Contractor").

Business Address:
35 Crosby Drive
Bedford, MA 01730

WHEREAS, reference is made to that certain document entitled, "MAMMOGRAPHY EQUIPMENT PREVENTIVE MAINTENANCE AND REPAIR SERVICES AGREEMENT", dated November 12, 2008, and further identified as County Agreement No. H-703614 thereto (all hereafter referred to as "Agreement"); and

WHEREAS, it is the intent of the parties hereto to increase the maximum obligation and make other changes set forth herein; and

WHEREAS, Agreement provides that changes in accordance with Paragraph 16, ALTERATION OF TERMS, may be made in the form of a written amendment which is formally approved and executed by the parties.

NOW, THEREFORE, the parties agree as follows:

1. This Amendment shall commence and become effective upon execution.
2. Agreement, Paragraph 5, Maximum Obligation of County, Subparagraphs B, C and D, shall be deleted in their entirety and replaced, and Subparagraph E shall be added as follows:

“B. Between November 1, 2013 through October 31, 2018, the maximum obligation of County for all services provided hereunder shall not exceed Eight Hundred Fifty Two Thousand, Sixty Four Dollars (\$852,064).

C. During the period November 1, 2013 through October 31, 2015 the Director, or his designee, may amend this Agreement if additional maintenance and repair services and professional services are needed, and may adjust the annual maximum obligation by no more than Thirty Thousand, Five Hundred Dollars (\$30,500) annually. In order to effectuate such a change a written amendment to this Agreement, which is formally approved by the parties, must be executed.

D. During the period November 1, 2015 through October 31, 2018, the Director, or his designee, may amend this Agreement if additional maintenance and repair services and professional services are needed, and may adjust the annual maximum obligation by no more than Seventy Seven Thousand, Two Hundred and Eighty Dollars (\$77,280). In order to effectuate such a change a written amendment to this Agreement, which is formally approved by the parties, must be executed.

E. The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the total Agreement authorization under this Agreement. Upon occurrence of this event, the Contractor shall send written notification to the DHS at the address herein provided in this Agreement, Paragraph 18, NOTICES, Subparagraph A(1)."

3. Agreement, Paragraph 10, Subcontracting, shall be deleted in their entirety and replaced as follows:

"10. SUBCONTRACTING:

A. The requirements of this Agreement may not be subcontracted by the Contractor **without the advance written approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Agreement.

B. If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications as reasonably requested by the County.

C. The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same

manner and to the same degree as if such subcontractor(s) were the Contractor employees.

D. The Contractor shall remain fully responsible for all performances required of it under this Agreement, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

E. The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The Contractor is responsible to notify its subcontractors of this County right.

F. The Director or his/her designee is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, the Contractor shall forward a fully executed subcontract to the County for their files.

G. The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

H. The Contractor shall obtain certificates of insurance from its subcontractors which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles
Department of Health Services
Contracts and Grants Division
313 N. Figueroa Street – 6E
Los Angeles, CA 90012
Attention: Kathy K. Hanks, C.P.M.
Director, Contracts and Grants

before any subcontractor employee may perform any work hereunder.”

4. Agreement, Paragraph 16, Alteration of Term, shall be deleted in its entirety and replaced as follows:

16. AMENDMENTS:

A. For any change which affects the scope of work, term, Agreement Sum, payments, or any term or condition included under this Agreement, an Amendment shall be prepared by the County and then

executed by the Contractor and by the Board of Supervisors or its authorized designee, however, any amendment to this Agreement shall not be effective unless mutually agreed to in writing by both parties.

B. The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors, Chief Executive Officer or designee. To implement such changes, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his/her designee, however, any amendment to this Agreement shall not be effective unless mutually agreed to in writing by both parties.

C. The Director or his/her designee, may at his/her sole discretion, authorize extensions of time as defined in Paragraph 1. Term of Agreement. The Contractor agrees that such extensions of time shall not change any other term or condition of this Agreement during the period of such extensions. To implement an extension of time, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his/her designee, however, any amendment to this Agreement shall not be effective unless mutually agreed to in writing by both parties.

D. The Director or his/her designee may require, at his/her sole discretion, the addition and/or change of certain terms and conditions in the Agreement to conform to changes in federal or state law or regulation, during the term of this Agreement. The County reserves the unilateral right to add and/or change such provisions as required by law or regulation, with notification to contractor, to preserve this Agreement's conformity and compliance to federal and state law or regulation. To implement such changes, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his/her designee, however, any amendment to this Agreement shall not be effective unless mutually agreed to in writing by both parties.

5. Standard Provisions, Paragraph 7, Contractor's Exclusion from Participation in a Federally Funded Program, shall be deleted in its entirety and replaced as follows:

"7. CONTRACTOR'S EXCLUSION FROM PARTICIPATING IN A
FEDERALLY FUNDED PROGRAM:

A. Contractor hereby warrants that neither it nor any of its Subcontractors' owners, officers, partners, directors, other principals, employees or independent contractors is restricted or excluded from providing services under any healthcare program funded by the Federal government, directly or indirectly, in whole or in part, (which includes Medi-Cal and Healthy Families) and that Contractor will notify Director within thirty (30) calendar days

in writing of: (1) any event that would require Contractor or any of the aforementioned parties' mandatory exclusion from participation in a Federally funded healthcare program; and (2) any exclusionary or suspension action taken by any agency of the Federal or State governments against any of the aforementioned parties' barring these parties' from participating in a Federally funded healthcare program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

B. Contractor shall indemnify and hold County harmless against any and all loss or damage County may suffer arising from any exclusion or suspension of Contractor or its Subcontractors' owners, officers, partners, directors, other principals, employees or independent contractors from such participation in a Federally funded health care program.

C. Failure by Contractor to meet the requirements of this Sub-paragraph shall constitute a material breach of contract upon which the County may immediately terminate or suspend this Agreement.

6. Standard Provisions, Paragraph 14, County's Quality Assurance Plan, shall be deleted in its entirety and replaced as follows:

"14. COUNTY'S QUALITY ASSURANCE PLAN: The County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards. The Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board and listed in the appropriate contractor performance database. The report to the Board will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Agreement or impose other penalties as specified in this Agreement."

7. Standard Provisions, Paragraph 15, Records and Audits shall be deleted in its entirety and replaced as follows:

"A. The Contractor shall maintain, and provide upon request by the County, accurate and complete financial records of its activities and operations as they relate to the provision of services hereunder relating to this Agreement in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.

B. The Contractor agrees that the County, or its authorized representatives shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to the

services provided under this Agreement. All such material, may include, but not be limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time.

C. Federal Access to Records: If, and to the extent that, Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. section 1395x(v)(1)(I)) is applicable, the Contractor agrees that for a period of four (4) years following the furnishing of services under this Agreement, the Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Controller General of the United States, or to any of their authorize representatives, the Agreements, books, documents and records of the Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if the Contractor carries out any of the services provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under Federal law), the Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

D. In the event that an audit of the Contractor is conducted specifically regarding this Agreement by any Federal or State auditor, including audits conducted by the Medicare and Medi-Cal programs, then the Contractor shall file a copy of each such audit report, including Service Organization Controls (SOC1) Reports, with the County's Auditor Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

E. If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of the County conduct an audit of the Contractor regarding the work performed under this Agreement, and if such audit finds that County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall, within thirty (30) days upon written request, at the option of the County's Auditor-Controller, be either: (1) repaid by the Contractor to the County by check, ACH transfer, or wire; , or (2) deducted from any further amount due to the Contractor from the County. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the

Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by the County for the purpose of this Agreement.

F. Failure on the part of the Contractor to comply with any of the provisions of this Paragraph 15 shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement."

8. Standard Provisions, Paragraph 28, Consideration of County's Department of Public Social Services ("DPSS") Greater Avenues for Independence ("GAIN") Program or General Relief Opportunity for Work ("GROW") Participants for Employment, shall be deleted in its entirety and replaced as follows:

"28. CONSIDERATION OF HIRING GAIN/GROW PARTICIPANTS:

A. Should the Contractor require additional or replacement personnel after the effective date of this Agreement, the Contractor shall use its best efforts to give consideration for any such employment openings to participants in the County's Department of Public Social Services (DPSS) Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor. The Contractor shall report all job openings with job requirements to: GAINGROW@dpss.lacounty.gov to obtain a list of qualified GAIN/GROW job candidates.

B. In the event that both laid-off County employees and GAIN/GROW participants meet the minimum qualifications for an open position reported by Contractor to the County's DPSS, and are available for hiring, County employees shall be given priority over GAIN/GROW participants."

9. Standard Provisions, Paragraph 52 shall be added to the Agreement as follows:

"52. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (2 C.F.R. PART 376): The Contractor hereby acknowledges that the County is prohibited from contracting with and making sub-awards to parties that are suspended, debarred, ineligible, or excluded or whose principals are suspended, debarred, ineligible, or excluded from securing federally funded contracts. By executing this Agreement, the Contractor certifies that neither it nor any of its owners, officers, partners, directors, other principals, employees, or independent contractors is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts.

Further, by executing this Agreement, the Contractor certifies that, to the best of its knowledge, none of its subcontractors, at any tier, or any owners, officers, partners, directors, other principals, employees, or independent contractors of any subcontractor is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. The Contractor shall immediately notify the County in writing, during the term of this Agreement, should it or any of the aforementioned parties either be suspended, debarred, ineligible, or excluded from securing federally funded contracts. Failure of the Contractor to comply with this provision shall constitute a material breach of this Agreement upon which the County may immediately terminate or suspend this Agreement.”

10. Standard Provisions, Paragraph 53 shall be added to the Agreement as follows:

“53. TIME OFF FOR VOTING: The Contractor shall notify its employees, and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than 10 days before every statewide election, every Contractor and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.”

11. Agreement is modified to add Schedule 8, attached hereto and incorporated herein by reference. All references to a Schedule in this Agreement shall now also include Schedule 8.

12. Except for the changes set forth hereinabove, Agreement shall not be changed in any respect by this Amendment.

/ /

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be executed by its Director of Health Services, and Contractor has caused this Amendment to be executed in its behalf by its duly authorized officer, the day, month and year first above written.

COUNTY OF LOS ANGELES

By _____
Mitchell H. Katz, M.D.
Director of Health Services

HOLOGIC, INC.
Contractor

Signature

By _____
Printed Name

Title _____

APPROVED AS TO FORM:
MARY C. WICKHAM
Interim County Counsel

By _____
Jason C. Carnevale,
Deputy County Counsel